

124104

JAMES T. GLENN, ESQ.
2000 K STREET, N. W.
WASHINGTON, D. C. 20006
788-4674

No. MAR 30 1973

Date
Fee \$ 50.00

March 30, 1973

Washington, D. C.

6982

RECORDATION NO. Filed & Received

MAR 30 1973 -2 40 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED
MAR 30 2 34 PM '73
I.C.C.
FEE OPERATION BR.

Mr. Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Sir,

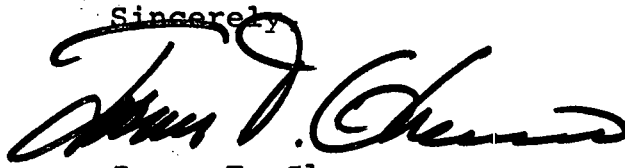
Pursuant to Section 20(c) of the Interstate Commerce Act as amended and regulations issued thereunder by the Commission 49 CFR 1116, enclosed herewith please find for recordation an original and five (5) copies each of an Agreement and Lease executed February 12, 1973, reflecting transactions between Auto-Train Corporation and the United States Railway Equipment Company, Chicago, Illinois, hereinafter referred to as United.

The equipment conveyed by the documents submitted herewith for recordation cover forty-one (41) Canadian National Railroad Company ("CN") Auto Transporters purchased by Auto-Train Corporation for \$1,021,000 and forty-one (41) REA Passenger Cars owned by Auto-Train Corporation. The Agreement sets forth a contractual plan between the parties whereupon the forty-one (41) Auto Transporters are sold to and modified by United incorporating certain parts from the dedicated REA Cars which are to be dismantled by United. The Lease provides terms and conditions under which Auto-Train Corporation will lease the aforesaid forty-one (41) Auto Transporters from United.

It is requested that three (3) copies of the documents submitted herewith bearing your stamp of recordation be returned to my office for the files of the parties to this transaction.

I have enclosed a check in the appropriate amount for payment of the recordation fee as prescribed.

Sincerely,



James T. Glenn

6982

RECORDATION No. 2869
Filed pursuant to the
Provisions of Section 20(c)
Interstate Commerce Act
Enclosures

LEASE

AGREEMENT made and entered into this 12th day of February, 1973.
between

UNITED STATES RAILWAY EQUIPMENT CO.,
an Illinois corporation, (hereinafter called "United"), and

Auto-Train Corporation.....RECORDATION NO. _____ Filed & Recorded

1801 K Street, N.W. MAR 30 1973 -2 40 PM

Washington, D. C. 20006
.....INTERSTATE COMMERCE COMMISSION

(hereinafter called "Lessee").

RECITALS

Lessee desires to lease from United as Lessor certain railroad cars, hereinafter specifically designated, all upon the rentals and terms and conditions set forth in this Lease.

AGREEMENT

It Is Agreed:

1. *Lease of Cars.* United agrees to lease to Lessee and Lessee agrees to and does hereby lease from United that number of railroad cars, of the type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Exhibit "A" attached hereto and by this reference made a part hereof. The Cars covered by this Lease are those which shall be delivered to and accepted by Lessee pursuant to Paragraphs 2 and 3 hereof. ~~THIS LEASE SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL THE CARS ARE RETURNED TO UNITED PURSUANT TO PARAGRAPH 3 HEREOF.~~

2. *Delivery of Cars.* United shall deliver the Cars as promptly as is reasonably possible from time to time in groups of no less than one..... United shall not be responsible for failure to deliver or delay in delivering Cars due to casualties and contingencies beyond its direct control, such as, but not limited to, labor difficulties, fire, delays and defaults of carriers and car and material suppliers; provided, however, that in no event shall Lessee be obligated to accept delivery of Cars after December 31, 1973 initial delivery shall be f.o.t. Southern Iron & Equipment Co., Georgia, or such other place as Lessee may direct, provided Lessee such other location.

Thereafter, Lessee shall be liable for, and shall pay or reimburse United for the payment of, all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of Cars, including specifically, but not exclusively, freight and switching charges for movement to and from United's plant at any time and for any reason.

3. Condition of Cars - Acceptance. All Cars delivered hereunder shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and/or specifications contained in Exhibit "A"; but Lessee shall be solely responsible for determining that Cars are in proper condition for loading and shipment. Within two days after United shall give Lessee notice that some or all Cars are ready for delivery, Lessee may have its authorized representative inspect such Cars at ~~XXXXXXXXXXXXXX~~ (United's plant) ~~XXXXXXXXXXXXXX~~ and accept or reject them as to condition. Cars so inspected and any Cars which Lessee does not elect to inspect shall be conclusively deemed to meet all requirements of this Lease and any differences or discrepancies from specified condition, construction, type, equipment, or otherwise, are thereby waived by Lessee without further act on its part. Lessee shall issue and deliver to United, with respect to all Cars accepted as or deemed hereunder to meet the requirements of this Lease, a Certificate of Inspection and Acceptance in the form and text attached hereto as Exhibit "B" and by this reference made a part hereof.

XX

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*"Interchange
**passenger
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5. Term - Average Date. This Lease shall be for a term (hereinafter referred to as the "original term") which shall commence on the date of ~~delivery of the first set of~~ ~~xxxxxx~~ hereof, and shall terminate twelve (12) years from the Average Date of Delivery unless sooner terminated in accordance with the provisions of this Lease. The Average Date of Delivery shall be determined after delivery of the Cars as follows.

(a) multiply the number of Cars delivered by United on each day by the number of days elapsed between such day and the date of delivery of the first Car hereunder, then add all of the products so obtained and divide by the total number of Cars so delivered; the quotient rounded out to the nearest whole number shall be added to the date of delivery of the first Car, and the resulting date shall constitute the Average Date of Delivery;

(b) the date on which delivery of a Car shall be deemed to have been made will be the day following delivery of the Car to the Lessee, as specified in Paragraph 2. A Car shall be conclusively deemed delivered to the Lessee on the earliest date shown on any of the following: (i) Certificate of Inspection and Acceptance or other writing accepting a Car signed by the Lessee; or (ii) a bill of lading showing delivery to Lessee or to a foreign line railroad for the account of Lessee.

6. Option to Extend. Unless Lessee is in default under the provisions of this Lease, Lessee shall have an option to extend the term of this Lease upon the same terms and conditions as to all or any portion of the Cars then subject to this Lease by notifying United in writing no less than ninety (90) days ~~xxxxxxxxxxxxxxx~~ prior to the end of the original term. An extension pursuant to this option with respect to any Car shall be for a period (hereinafter referred to as the "extended term") ~~of xxxxxxxx~~ from the end of the original term and shall automatically continue ~~for xxxxxxxx~~ until termination of this Lease with respect to such Car.

*five years

[illegible]

(c) by the expiration of five (5) years from the end of the original term at which time this Lease will terminate in all events.

7. *Rental.* Lessee shall pay to United as rental for each Car,

(a) during the original term, from and including the date of delivery of such Car, the sum of \$438.33 per month.

(b) during the extended term, from and including the first day following the end of the original term, the sum of **\$160.00 per month.**

If, pursuant to Exhibit "A" hereof, the Cars bear United's reporting marks and numbers, then any mileage payments allowed by railroads on the Cars shall be the property of United, but United shall credit the mileage payments actually received by it to a mileage payment account maintained by United in respect to this Lease. Payments recorded in such account shall be offset pro rata against and only a plant rental (thereafter due from Lessee under this Lease) provided, how-

RIDER A

12. Liens. Lessee agrees that it shall keep the Cars free from any encumbrances or liens, which may be a cloud upon or otherwise affect United's title, which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease, and shall promptly discharge any such lien, encumbrance or legal process, except such as are permitted by United under Paragraph 11 hereunder; but Lessee shall not be required to pay or discharge the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the judgment of United, the rights or interests of United in and to the Cars will be materially endangered.

suit, expense or liability arising out of or on account of the use or incorporation by United upon delivery of a Car or upon the making of repairs thereto by United, of any invention or the infringement of any patents, except if such invention was used or incorporated by reason of the specifications in Exhibit "A" hereto. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

14. *Warranty - Representations.* Except as otherwise provided in Paragraph 9, United makes no warranty or representation of any kind whatsoever, either express or implied as to any matter whatsoever, including specifically but not exclusively, fitness, design, workmanship, condition or quality of the Cars or parts thereof which Cars have been accepted by Lessee hereunder, and United shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential on account of any matter which would otherwise constitute a breach of warranty or representation. United agrees to assign to Lessee such rights as it may have under warranties, if any, which it may have received from the manufacturer of any new Cars and shall at Lessee's expense cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights. Lessee represents that all of the matters set forth in Paragraph 22(a) through and including (e) shall be and are true and correct at all times that any Car becomes subject to this Lease.

15. *Car Marking.* Each Car upon delivery will be distinctly, permanently and conspicuously marked in stencil with one of the reporting numbers and marks specified in Exhibit "A" and with a legend on each side in letters not less than three-quarters inches (3/4") in height substantially as follows:

UNITED STATES RAILWAY EQUIPMENT CO.
Lessor

The name of any assignee of United's interest or trustee or mortgagee having an interest in the Car shall also appear if requested by United or such other party, or in lieu thereof United may add the following inscription:

Title to this Car subject to documents recorded
under Section 20(c) of Interstate Commerce Act.

Lessee shall immediately replace any such stenciling which may be removed, destroyed or become illegible wholly or in part. Upon Lessee's request United shall furnish a stencil with the form of the marks, numbers and legend.

Except for the numbering and stenciling as provided herein and the markings of Lessee as set forth in Auto-Train's drawing No. 34338, Lessee shall keep the Cars free from any marking or labeling which might be interpreted as a claim of ownership thereof by Lessee or by any party other than United.

16. *Inspection - Inventory.* During the continuance of this Lease, United shall have the right, at its own cost and expense, to inspect the Cars at any reasonable time or times wherever the Cars may be. Lessee shall, upon request of United, but no more than once every year, furnish to United two (2) copies of an accurate inventory of all Cars in service.

after its delivery hereunder

17. *Loss, Theft or Destruction of Cars.* In the event any Car is lost or stolen or is destroyed or damaged beyond economic repair from any cause whatsoever, Lessee shall promptly and fully inform United of such occurrence and shall within thirty (30) days after the date of such notice, pay to United, as liquidated damages in lieu of any further claim of United hereunder except for accrued rent and such claims as arise or exist under Paragraphs 11, 12 and 13, an amount in cash equal to:

(a) the present worth, as hereinafter defined, of the total remaining rental for such Car which would otherwise accrue during the original term as defined in Paragraph 5, from the date of such occurrence to the last day of such term; plus

(b) the net scrap value, as hereinafter defined, for such Car.

If any such loss, destruction or damage occurs off the line of Lessee, United may elect in lieu of the amount provided in Paragraphs (a) and (b) to receive a sum equal to the settlement basis provided by the Interchange Rules. The present worth of the total remaining rental as used in this Paragraph 17 (a) shall mean an amount equal to the rental discounted on a five per cent (5%) per annum basis (compounded annually from the date of such occurrence to the end of the original term). The net scrap value shall mean an amount in cash equal to the current quoted price per net ton of No. 1 Heavy Railroad Making Steel Scrap prevailing at _____, as published in Iron Age or other reputable industrial

The net scrap value shall mean an amount in cash equal to the average of the current quoted prices per net ton of No. 1 Heavy Railroad Melting Steel Scrap, prevailing at Pittsburgh, Pennsylvania, Cleveland, Ohio and Chicago, Illinois, as published in Iron Age or other reputable industrial journals, on the first day of the month preceding the month in which payment of such net scrap value is required to be made, multiplied by forty (40) tons.

() XXXXX

~~journal, on the first day of the month preceding the month in which payment of such net scrap value is required to be made, multiplied by~~

In the event any of the Cars are destroyed or damaged beyond economic repair on the line of Lessee, United may, at its option, in lieu of receiving the net scrap value of such Cars, elect that Lessee return such damaged or destroyed Cars to United either on wheels or in cars at such point on Lessee's line as United may designate. United shall make such election in writing within fifteen (15) days after receiving Lessee's notice that Cars have been destroyed or irreparably damaged. This Lease shall continue in full force and effect irrespective of the cause, place or extent of any damage, loss or destruction of any of the Cars, the risk of which shall be borne by Lessee; provided, however, that this Lease shall terminate with respect to any Car which is lost, stolen or destroyed or damaged beyond repair on the date United shall receive payment of the amount required to be paid to it on account of such Car under this Paragraph 17.

18. **Return of Cars.** Upon the expiration or upon the termination of this Lease with respect to any Car (other than pursuant to Paragraph 17 hereof), Lessee shall at its sole cost and expense,

(a) forthwith surrender possession of such Car to United in the condition required by Paragraph 10 hereof by delivering same to United (at its plant or ~~any other place~~ East of the Mississippi ~~or any other place~~) ~~(at such place as may be determined by mutual agreement of the parties)~~; and

(b) if United shall so request by written notice delivered prior to surrender of possession of such Car as above provided, provide suitable storage for such Car for a period of ninety (90) days from the date of expiration or termination and inform United of the place of storage and the reporting number of the Car there stored.

Delivery in storage shall constitute delivery of possession for the purpose of this Paragraph 18 and such storage shall be at the risk of United. Upon termination of the storage period or upon request of United prior thereto, Lessee shall cause the Car to be transported to United at the place and in the manner provided in Paragraph 18(a). Until the delivery of possession to United pursuant to Paragraph 18(a)(iii), Lessee shall continue to pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall, in addition, make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Lease as though such termination or expiration had not occurred.

*and expense

19. *Default.* The term "event of default" for the purpose hereof shall mean any one or more of the following:

(a) non-payment by Lessee within thirty (30) days after the same becomes due of any installment of rental or any other sum required to be paid hereunder by lessee;

(b) the Lessee shall default or fail for a period of thirty (30) days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder;

(c) a decree or order shall be entered by a court having jurisdiction in the premises adjudging Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Lessee under the Federal Bankruptcy Act or any other applicable Federal or State law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Lessee or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of thirty (30) days;

(d) the institution by Lessee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of any proceedings or to any action taken or proposed to be taken in any proceedings or action described in Paragraph 19 (c), or the making by Lessee of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by Lessee in furtherance of any such action.

20. Remedies. Upon the happening of an event of default, United, at its option, may:

(a) proceed by appropriate court action either at law or in equity for specific per-

* SIMONXXXXXXXXXXXXXXXXXXXX

formance by the Lessee of the applicable covenants of this Lease or to recover from Lessee all damages, including specifically but not exclusively, expenses and attorneys' fees which United may sustain by reason of Lessee's default or on account of United's enforcement of its remedies hereunder;

(b) elect only to terminate the Lessee's right of possession (but not to terminate the Lease) without releasing Lessee in whole or in part from its liabilities and obligations accrued hereunder, or hereafter to accrue for the remaining term of the Lease, and thereupon require Lessee to deliver all such Cars to United at any of its plants or to take possession itself, of any or all of the Cars wherever same may be found. United may, but need not, require delivery of the Cars to it or repossess the Cars, but in the event the Cars are delivered to United or are repossessed, United shall use reasonable efforts to relet the same or any part thereof to others upon a reasonable rental and such other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. Lessee shall not assert, in mitigation of its damages or otherwise, any lack of diligence by United in or related to the procuring of another lessee or in refusing to accept any proposed or prospective lessee or other transaction, such matters being within United's sole discretion and determination. The election by United to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained;

(c) declare this Lease terminated and recover from Lessee all amounts then due and payable plus, as liquidated damages for loss of the bargain and not as penalty, a sum which represents the excess of the present worth, at the time of such termination, if any, of the aggregate rental which would have thereafter accrued from the date of such termination to the end of the original term over the then present worth of the fair rental value of the Cars for such period. Present worth is to be computed in each case on the basis of a five per cent (5%) per annum discount, compounded annually from the respective dates upon which rental would have been payable hereunder had this Lease not terminated. In addition to the foregoing, United shall recover any damages sustained by reason of the breach of any covenant of the Lease other than for the payment of rental;

(d) recover or take possession of any or all of the Cars and hold, possess and enjoy the same, free from any right of the Lessee to use the Cars for any purposes whatsoever.

The remedies provided in this Paragraph 20 in favor of United shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies, in United's favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify any of the remedies herein provided to the extent that such waiver is permitted by law.

21. Sublease and Assignment. Lessee shall have the right to sublease any of the Cars, subject at all times to the terms hereof, and each of the parties shall have the right to assign the Lease or their rights thereunder only as follows:

(a) all rights of United hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to Lessee, but subject to Lessee's rights under this Lease. If United shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee. Lessee will not amend, alter or terminate this Lease without the consent of the assignee while such assignment is in effect. The rights of any assignee or any party or parties on behalf of whom such assignee is acting shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever, whether arising out of any breach of any obligation of United hereunder or by reason of any other indebtedness or liability at any time owing by United to the Lessee;

(b) Lessee shall not assign this Lease without the written consent of United provided, however, that Lessee may assign all of its rights under this Lease to another railroad corporation which succeeds to all or substantially all of the assets and business of the Lessee provided that such successor shall assume all of the obligations of the Lessee hereunder.

RIDER D

Upon the request of United or its assignee at any time or times as may be reasonable, Lessee will deliver to United or its assignee (i) an opinion of counsel for Lessee, addressed to United or its assignee, in respect of (a) the legal status of Lessee in the state of its incorporation, (b) the legal status of the Lease, (c) whether, in its opinion, any recording, filing or depositing of the Lease, other than with the Interstate Commerce Commission under Section 20(c) of the Interstate Commerce Act is necessary to preserve or protect the title of United or its assignee in the United States of America, and (d) whether, in its opinion, any governmental authorization or approval is necessary in connection with Lessee's continued performance of the Lease or any other action contemplated thereunder, and (ii) a certificate of the President of Lessee to the effect that the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee, and all of the Cars were, upon delivery to Lessee, in condition satisfactory to Lessee and were accepted by Lessee in accordance with the terms of this Lease.

27. *Severability-Waiver.* If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of United to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

28. *Terminology.* In construing any language contained in this Lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

29. *Past Due Rental.* Anything to the contrary herein contained notwithstanding, any non-payment of rentals or other sum due hereunder, whether during the thirty (30) day period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of the Lessee to pay also an amount equal to seven per cent (7%) per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of the overdue rentals for the period of time during which they are overdue.

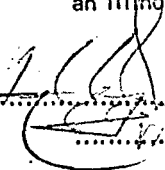
30. *Benefit.* The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties, their successors and assigns (to the extent permitted in Paragraph 21 hereof) and the term "United" and the term "Lessee" shall mean, respectively, all of the foregoing persons who are at any time bound by the terms hereof. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 13 hereof shall apply to and inure to the benefit of any assignee of United, and if such assignee is a trustee under an indenture under which notes of United have been issued in connection with the financing of the Cars, then to any holder of such notes.

31. RIDER B

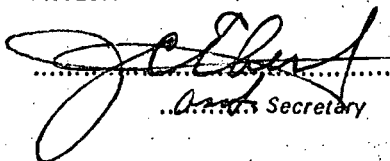
32. RIDER C

IN WITNESS WHEREOF, United and Lessee have duly executed this Lease as of the day and year first above written.

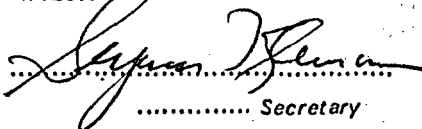
UNITED STATES RAILWAY EQUIPMENT CO.,
an Illinois corporation

By: 
President

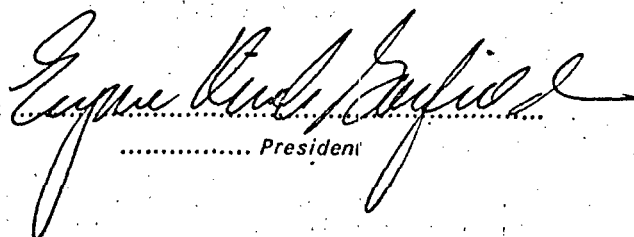
ATTEST:


Secretary

ATTEST:


Secretary

AUTO-TRAIN CORPORATION

By: 
President

RIDER B

31. Insurance.

(a) Lessee shall, at its own cost and expense, insure each Car from the time of delivery and acceptance thereof under this Lease and at all times thereafter until Lessee's obligations under this Lease with respect to such Car have been discharged, against loss of any kind or nature or from any cause whatsoever (such as fire, lightning, theft, wreck, derailment, collision, flood, tornado, cyclone, sabotage, riot or civil commotion), such insurance, in the case of each Car to be in an amount equal to the depreciated basis provided by the Interchange Rules, except that such coverage may be limited so that any loss amounting to less than \$1,000 per Car shall not be payable by the Insurer. All such insurance shall be taken for the benefit of United and Lessee, as their respective interests may appear, in an insurance company or companies satisfactory to United, and shall provide that the proceeds of such insurance shall be payable to United. All insurance proceeds received by United with respect to any Car shall (i) be paid to Lessee, in the case of reparable damage to such Car or Cars, subject to receipt by United from Lessee of proof satisfactory to United of the proper repair of such damage; or (ii) be applied by United in the case of the loss, destruction or damage beyond repair of such Car or Cars, towards the satisfaction of Lessee's obligation to make the payment required by Paragraph 17 hereof.

(b) All such policies required above shall contain a provision to the effect that the Insurer will give United thirty days prior written notice before cancelling, terminating or modifying any then effective policy.

(c) In the event Lessee is notified that United has assigned this Lease and/or the rental payable hereunder, Lessee shall provide insurance containing loss payable clauses, satisfactory to both United and United's assignee. Lessee shall furnish United or United's assignee with a certificate or other satisfactory evidence of the maintenance of the insurance required hereunder.

RIDER B CONTINUED

(d) Except as provided in (e) of this Paragraph 31, the proceeds of any insurance received by United on account of or for any loss or casualty shall be released to Lessee upon a written application signed by Lessee, for the payment of or to reimburse Lessee for, the cost of repairing the Cars which have been damaged. Such application shall be accompanied by satisfactory evidence of the cost and satisfactory completion of such repair. If an event of default has occurred and is continuing hereunder, such proceeds may be applied at United's option, against any liability of Lessee to United hereunder.

(e) The proceeds of any insurance received by United on account of a lost, stolen, destroyed or damaged Car in respect of which Lessee shall have made payment to United, pursuant to Paragraph 17 hereof, shall be released to Lessee upon a written application signed by Lessee provided, however, that if an event of default has occurred, and is continuing hereunder, such proceeds may be applied by United against any liability of Lessee to United hereunder.

RIDER C

32. Purchase Option. During the continuance of this Lease and provided that Lessee is not in default hereunder, Lessee shall have the right from time to time to purchase any or all of the Cars after the expiration of the seventh year of the original term of this Lease by serving written notice to United at any time prior to the date upon which such purchase is to be made at a price determined in accordance with the following:

<u>If the Purchase is Made</u>	<u>Price per car shall be</u>
At or after end of 7th year and prior to end of 8th year	\$24,330
At or after end of 8th year and prior to end of 9th year	21,446
At or after end of 9th year and prior to end of 10th year	18,562
At or after end of 10th year and prior to end of 11th year	15,678
At or after end of 11th year and prior to end of 12th year	12,794
At end of 12th year and Lease is not extended	9,910
At or after end of 12th year and prior to end of 13th year	9,910
At or after end of 13th year and prior to end of 14th year	9,690
At or after end of 14th year and prior to end of 15th year	9,470
At or after end of 15th year and prior to end of 16th year	9,250
At or after end of 16th year and prior to end of 17th year	9,030
At end of 17th year	8,810

GEORGIA
STATE OF ~~NEW YORK~~)
COUNTY OF ~~NEW YORK~~ ss.:
DEKALB

On this 15th day of February, 1973, before me personally appeared Tom C. Campbell, to me personally known, who being by me duly sworn, says that he is Vice President of the United States Railway Equipment Co., and J. C. Ebert, to me personally known to be the Assistant Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Grace C. McNeese

Notary Public
Notary Public, Georgia, State at Large
My Commission Expires Nov. 26, 1976

STATE OF New York }
COUNTY OF New York } ss

On this 12th day of February, 1973, before me personally appeared EUGENE KERIK GARFIELD, to me personally known, who being by me duly sworn, says that he is President of AUTO-TRAIN CORPORATION, and SEYMOUR KLEINMAN to me personally known to be the Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Suzan Beulike
Notary Public

SUZAN BEULIKE
Notary Public, State of New York
No. 31-0291930
Qualified in New York County
Commission Expires March 30, 1973

EXHIBIT "B"

Lease dated, 19....., by and between United States Railway Equipment Co., ("United") and ("Lessee")

CERTIFICATE OF INSPECTION AND ACCEPTANCE

....., 19.....

United States Railway Equipment Co.
105 West Adams Street
Chicago, Illinois 60603

Gentlemen:

The undersigned, being a duly authorized inspector for Lessee, hereby certifies that he has made an inspection of (.....) Cars bearing numbers as follows:

or has, on behalf of Lessee, elected to forego such inspection all as provided in the Lease; and hereby accepts such Cars for the Lessee pursuant to the Lease; that each of said Cars is plainly marked in stencil on both sides of each car with the words:

UNITED STATES RAILWAY EQUIPMENT CO.
Lessor

(Title to this Car subject to documents recorded
under Section 20(c) of Interstate Commerce Act.

in readily visible letters not less than three-quarters inches ($\frac{3}{4}$ ") in height; and that each of said Cars conforms to, and fully complies with the terms of said Lease and is in condition satisfactory to the Lessee.

.....

Lessee

EXHIBIT "A"

Lease dated February 12, 1973, by and between United States Railway Equipment Co., ("United") and AUTO-TRAIN CORPORATION ("Lessee")

TYPE OF CAR:

New ☐

Used ☒

NUMBER OF CARS:

Forty-One (41)

*REPORTING NUMBERS AND MARKS:

To be furnished

SPECIFICATIONS DESIGNATED BY LESSEE:

In accordance with Paragraph III(a) of that certain agreement dated even date herewith between United and Lessee.

*When United's reporting marks are specified, this Lease is subject to the granting of all necessary consents to such use by carrier, AAR, or any other approval now or hereafter required by tariff, AAR rules, or applicable laws and regulations.

AGREEMENT

MAR 30 1973 -2 40 PM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT ("Agreement") made this 12th day of February, 1973, by and between AUTO-TRAIN CORPORATION, a Florida corporation ("Auto-Train"), and UNITED STATES RAILWAY EQUIPMENT CO., an Illinois corporation ("United"),

W I T N E S S E T H:

WHEREAS, Auto-Train presently owns forty-one REA Railroad passenger cars ("REA Cars") and has an Option Agreement ("Option") to acquire from the Canadian National Railway Company ("CN") thirty-nine eight unit cars and two six unit cars ("Bi-Level Cars") for an aggregate purchase price of \$1,021,000 Canadian funds ("Purchase Price"); and

WHEREAS, Auto-Train has deposited as earnest money ("Earnest Money") \$50,000 United States funds with CN pursuant to the Option; and

WHEREAS, said Option expires at 12:01 p.m. Eastern Standard Time on February 15, 1973; and

WHEREAS, Auto-Train desires to have United cause the assembly of the truck and brake assemblies from the REA Cars on the Bi-Level Cars as well as certain wheels, axles and roller bearing assemblies to be supplied by Auto-Train and make certain modifications and repairs thereon, and to have United lease said finally assembled and repaired cars ("Cars") to

Auto-Train, all on the terms and conditions hereinafter set out;

NOW, THEREFORE, the parties hereto, in consideration of the mutual premises and covenants herein contained, do hereby agree as follows:

I. Option. Auto-Train shall exercise the Option and acquire the Bi-Level Cars on the following terms and conditions:

(a) Auto-Train shall convey title to United to the Bi-Level Cars which shall be approved by United as a result of the joint inspection hereafter set out simultaneously with the conveyance of title to Auto-Train by CN, and United shall pay Auto-Train the Purchase Price upon delivery to United of a bill of sale from Auto-Train and the opinions of CN counsel and Auto-Train counsel described in paragraph (e), provided, however, as a condition to the payment of said amount by United and prior to or simultaneously with such payment, Auto-Train must obtain an insurance policy naming United as an insured in such form and with such company or companies as may be approved by United and insuring said Bi-Level Cars to the full amount of the Purchase Price against any damage, destruction or other loss in storing prior to delivery to the Georgia Plant and shipping the same to the Georgia Plant hereafter referred to, it being the intent of the parties that United shall be reimbursed by the insurance company or

companies for the full amount of any such damage, destruction or other loss incurred prior to receipt at the Georgia Plant up to the full Purchase Price paid for such Bi-Level Cars. Such insurance shall be non-cancellable without thirty days written notice to United.

(b) Auto-Train acknowledges that CN has undertaken to sell, pursuant to the Option, an aggregate of forty-one Bi-Level Cars, all of which will be in satisfactory condition for movement in the normal interchange of rail traffic as set forth in the Code of Rules of the Association of American Railroads governing the condition of and repairs to freight cars for the interchange of traffic (the "A.A.R. Code") and which have an underframe and superstructure useable without reconstruction for the purposes intended hereunder. Prior to payment of the Purchase Price, representatives of Auto-Train and United shall jointly inspect the Bi-Level Cars, and their mutual acceptance thereof at the point of inspection in Canada shall be deemed conclusive on the parties as to the acceptability of the Bi-Level Cars for repair and modification as herein provided.

(c) Auto-Train shall at its risk, cost and expense cause the Bi-Level Cars to be delivered to Southern Iron and Equipment Company at its plant in ~~Decatur~~, Georgia ("Georgia Plant") in the same condition as such Bi-Level Cars were at the time of their acceptance, and

shall pay all freight required in connection with the shipment of such Bi-Level Cars to and from temporary storage prior to their delivery to the Georgia Plant. In addition, Auto-Train shall pay all storage, duty, excise taxes and other similar costs related to the payment of the Purchase Price by United, it being the intent of the parties that United shall only be obligated to pay a maximum amount equal to the Purchase Price as the total cost of acquiring ownership and possession of the Bi-Level Cars at the Georgia Plant.

(d) Auto-Train shall arrange for storage of the Bi-Level Cars in a manner reasonably satisfactory to United prior to the delivery thereof to the Georgia Plant and for delivery thereof to the Georgia Plant. Such delivery shall be made at the rate of approximately two Bi-Level Cars per week beginning upon the receipt at the Georgia Plant of trucks and brake assemblies from the REA Cars, wheels, axles and roller bearing assemblies, and other repair materials sufficient in United's determination (including receipt of the same at the Georgia Plant as scheduled) to make it practical for United to cause the assembly and repair work required hereunder to begin and to continue on a regularly scheduled production basis until completion.

(e) Auto-Train agrees to cause to be delivered to United an opinion of counsel for CN addressed

to Auto-Train and United and dated the day of payment of the Purchase Price pursuant to the Option to the effect that such counsel is of the opinion that CN has good and marketable title to the Bi-Level Cars, free and clear of any lien, charge, security interest or encumbrance of any nature whatsoever and that the CN bill of sale is binding, valid and enforceable in accordance with its terms. Auto-Train agrees further to cause such opinion of counsel of CN or an opinion of counsel for Auto-Train addressed to United to be delivered after the filing of the Lease hereinafter referred to with the Interstate Commerce Commission stating that such records reveal no other lien, charge, security interest or encumbrance of any nature whatsoever other than the Lease referred to herein. Auto-Train shall obtain a bill of sale from CN with general warranty of title and shall deliver a bill of sale to United with general warranty of title, and an assignment of Auto-Train's rights under its bill of sale from CN, as well as such other instruments by CN and Auto-Train, including an opinion of counsel that such Auto-Train bill of sale and assignment are binding, valid and enforceable in accordance with their respective terms, as United or its counsel may deem appropriate to vest title to such Bi-Level Cars in United, free and clear of any lien, charge, security interest or encumbrance of any nature whatsoever, except the Lease referred to herein.

II. REA Cars.

(a) Auto-Train shall ship forty-one REA Cars to Briggs & Turivas, Inc., Dennison, Ohio ("Dismantler"), at its risk, cost and expense, in lots of not greater than ten REA Cars, beginning no later than the 12th day of February, 1973, and completing said shipment no later than the 3rd day of April, 1973, all in accordance with a reasonable schedule for dismantling said REA Cars.

(b) United agrees to cause such REA Cars to be dismantled by the Dismantler pursuant to a contract with such Dismantler at United's cost with the following disposition of the various parts thereof:

1. All trucks and brake assemblies (other than the wheels, axles and bearing assemblies) which are in satisfactory condition for movement in the normal interchange of rail traffic as set forth in the A.A.R. Code governing the condition of and repairs to passenger cars for the interchange of traffic and which are generally usable for the purposes intended hereunder and require no reconstruction, as determined by mutual inspection of Auto-Train and United at the Georgia Plant, shall be further delivered to the Georgia Plant, at the risk, cost and expense of Auto-Train.

2. All of the wheel and axle assemblies ~~shall be dismantled from the trucks at the Georgia Plant~~ ~~and shall be delivered to Seaboard Coast Line Railroad~~ 16

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~~xxxxxx~~ upon written instruction from and at the risk, cost and expense of Auto-Train.

3. All other materials and items obtained from the dismantling of said REA Cars shall belong to United.

(c) Auto-Train shall deliver to the Georgia Plant, forty-one car sets of wheel, axle and roller bearing assemblies which are in satisfactory condition for assembling to the Bi-Level Cars pursuant to this Agreement without any repair or other work applicable thereto required of United.

(d) Auto-Train agrees to acquire and deliver to the Georgia Plant such passenger trucks and brake assemblies in the aforesaid condition as may be required so that United shall have an aggregate of forty-one car sets of passenger trucks and brake assemblies in such condition.

(e) Auto-Train shall cause to be delivered to United an opinion of counsel to the effect that such counsel has reviewed the records of the Interstate Commerce Commission in respect of the REA Cars, and that such records reveal no other lien, charge, security interest or encumbrance of any nature whatsoever, other than the Lease referred to herein, and Auto-Train

shall deliver such bills of sale with general warranty of title and other instruments, including an opinion of counsel that such bills of sale are binding, valid and enforceable in accordance with their terms, as United or its counsel may deem appropriate to vest such title in United to the forty-one wheel, axle and roller bearing assemblies and the REA Cars, other than the wheel and axle assemblies thereof, free and clear of any lien, charge, security interest or encumbrance of any nature whatsoever except the Lease referred to herein.

III. Assembly and Repair of Cars.

(a) At United's expense, United shall cause the Bi-Level Cars to be modified and converted by Southern (as hereinafter defined), into Cars which will substantially conform to Auto-Train's present twenty-eight automobile carriers, all in accordance with a specification substantially based upon drawings heretofore furnished by Auto-Train to Southern. Pursuant to the Lease, as hereinafter defined, and barring any delay attributable to or caused by conditions beyond United's control, such as labor disturbances, the unavailability of materials to be provided by United or acts of God, and subject to the delivery by Auto-Train of the Bi-Level Cars, the trucks and brake assemblies from the REA Cars and the wheel, axle and roller bearing assemblies to the Georgia Plant in accordance with Paragraph

II above, in such manner as to permit United to cause such modification and conversion to begin not later than March 26, 1973 and to continue on a regularly scheduled production basis until completion, all work to be performed hereunder shall be completed no later than October 31, 1973 and United shall cause completed Cars to be delivered to Auto-Train at a rate of approximately two Cars per week beginning with the week of April 22, 1973.

(b) United shall be entitled to retain and dispose of, as its own, any salvage from the Bi-Level Cars.

(c) Auto-Train shall have the right at all times to have one of its employees present at the Georgia Plant during the performance of the work described herein.

(d) In connection with each of the Cars assembled and repaired pursuant hereto, United shall cause U.S. Railway Mfg. Co., an Illinois corporation doing business as Southern Iron & Equipment Company ("Southern") to warrant to Auto-Train that such Car was assembled and repaired in accordance with the specifications hereinabove referred to, and that all of the work performed by Southern is free from defects in materials and workmanship, (except as to the design of the Cars or items not manufactured or repaired by

Southern), under Auto-Train's present normal use and service, Southern's obligation under this warranty being limited to making good by replacement or repair at the Georgia Plant of the materials or workmanship in respect of any Car which shall, within one year after delivery of such Car to Auto-Train pursuant to the Lease hereinafter referred to, be returned to the Georgia Plant with transportation charges paid by Auto-Train and which Southern's examination shall disclose to its and Auto-Train's mutual satisfaction to have been so defective. United shall cause Southern to pass on to Auto-Train any warranties obtained by it from the manufacturer or supplier of any parts or materials incorporated into the Cars. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SOUTHERN AFTER INSPECTION AND ACCEPTANCE PURSUANT TO THE LEASE.

(e) Auto-Train shall indemnify and hold harmless United and Southern from and against any and all liabilities, including reasonable attorneys' fees related thereto, arising out of or in connection with any claims of patent infringement related to the design of the Cars and United's or Southern's obligation hereunder.

V. Lease Agreement.

(a) Simultaneously with the execution of this Agreement, United and Auto-Train have executed a Lease Agreement (the "Lease") in the form annexed hereto as Exhibit A.

(b) Notwithstanding any provision of the Lease to the contrary, United shall not be required to deliver Cars pursuant to the Lease unless Auto-Train shall have performed all of its obligations hereunder.

VI. Default by United. In the event that United shall be in material default in the performance of any of its obligations hereunder for a period of thirty days after written notice thereof, Auto-Train shall have the right, exercisable at any time after any such default shall have occurred and diligent curative action by United shall not be then in progress and provided that such default shall be then continuing, to purchase from United any Car or Cars or the materials to be incorporated therein or assembled thereto in its or their then existing condition at a purchase price equal to the actual cost thereof to United. Auto-Train's rights hereunder shall be specifically enforceable and in addition to any other rights it may have at law or in equity, except that Auto-Train shall have no right to recover

special or consequential damages by reason of such default and Auto-Train shall exercise its best efforts to mitigate the general damages resulting from such default.

VII. Miscellaneous. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois and may be changed or terminated only by agreement in writing signed by the party against whom enforcement of such a change or termination is sought. This Agreement may be executed in any number of counterparts, any of which so executed shall be deemed to be an original and such counterparts together shall constitute but one and the same contract, which shall be evidenced by any such signed counterpart. The covenants, conditions and agreements contained in this Agreement shall bind and inure to the parties, their successors and assigns, except that the obligations of United hereunder, other than those pursuant to the Lease, and the rights and obligations of Auto-Train hereunder may not be assigned without the consent of the parties hereto in writing.

IN WITNESS WHEREOF, United and Auto-Train have duly executed this Agreement as of the day and year first

above written.

[Corporate Seal]

AUTO-TRAIN CORPORATION

By: Eugene H. Baird, President

ATTEST: Lyman Klemm, Secretary

UNITED STATES RAILWAY EQUIPMENT CO.

[Corporate Seal]

By: Charles E. Vice-Pres

ATTEST: John H. Smith, Secy.

STATE OF ~~NEW YORK~~ ^{GEORGIA})
 : ss.:
COUNTY OF ~~NEW YORK~~ ^{DEKALB}

On this 15th day of February, 1973, before me personally appeared Tom C. Campbell to me personally known, who being by me duly sworn, says that he is Vice President of the United States Railway Equipment Co., and J. C. Ebert to me personally known to be the Assistant Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Grace C McNeese
Notary Public
Notary Public, Georgia, State at Large
My Commission Expires Nov. 26, 1976

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On this 12th day of February, 1973, before me personally appeared Eugene Kerik Garfield to me personally known, who being by me duly sworn, says that he is President of Auto-Train Corporation, and Seymour Kleinman to me personally known to be the Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Suzan Beulike
Notary Public

SUZAN BEULIKE
Notary Public, State of New York
No. 31-0281930
Qualified in New York County
Commission Expires March 30, 1973